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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

GERONIMO CHAVEZ VELAZQUEZ,

Defendant and Appellant.

A125185

(San Mateo County
Super. Ct. No. SC067935)

Defendant Geronimo Chavez Velazquez appeals his conviction for unlawfully driving or taking a vehicle, giving a false name to a police officer, and driving without a valid license. He appeals on the single contention that the trial court abused its discretion by denying his request for an overnight continuance to prepare closing argument, and in doing so deprived him of effective assistance of counsel. We find no merit in these contentions and shall affirm.

FACTUAL AND PROCEDURAL HISTORY

Defendant was charged by information with one count of unlawfully driving or taking a vehicle (Veh. Code, § 10851, subd. (a)), one count of giving a false name to a police officer (Pen. Code, § 148.9, subd. (a)), and one count of driving without a valid license (Veh. Code, § 12500, subd. (a)). The information also alleged prior felony convictions of Health and Safety Code sections 11350 and 113377 and Penal Code section 12021. A jury found defendant guilty of all charges.

The following testimony was presented at trial. Jeremy Anson testified that on January 20, 2009, he learned that his white Jeep, which he had lent to his girlfriend,

Maresa Danielson, had been stolen. He filed a police report later that day. On January 22 the police directed him to Redwood City, where they had recovered his Jeep. Anson observed that the driver's side window was broken and the steering column and dashboard were damaged. A screwdriver and other items that he had never seen before were in the cab. Anson did not know defendant and had not given him permission to take the Jeep.

Maresa Danielson testified that on January 20 she borrowed Anson's Jeep and drove it to work, parked it in front of her office, and went in to her job. The Jeep was undamaged when she left it. She did not leave a screwdriver or other tools in the Jeep. When she emerged at lunchtime, the Jeep was missing and shattered glass was on the ground adjacent to its former parking spot. Danielson did not know defendant and had not given him permission to drive the Jeep.

Officer Joseph Burgess of the California Highway Patrol testified that on the date in question he stopped a white Jeep driven by defendant. Defendant was accompanied by one passenger. When Burgess asked defendant for license and registration, he noticed that the steering column had been broken open, that there was no driver's side window, that defendant was surrounded by small pieces of glass, and that the Jeep's radio was missing. The car key was of an unfamiliar design to Burgess. Defendant admitted that he had no driver's license, and told the officer, verbally and in writing, that his name is "Geehimo Velassques." He handed Burgess registration and insurance papers for the Jeep but the license plate number shown on the registration did not match the plates mounted on the Jeep. When Burgess ran the registration, he discovered that the Jeep was registered to Jeremy Anson and had been reported stolen.

An employee of the California Department of Motor Vehicles testified that according to the department's records defendant's driver's license had expired in 2007.

Joseph Eubanks testified that on the day in question, defendant drove him from Redwood City to Oakland. They stopped at the home of defendant's uncle and then at a nearby liquor store for coffee. Eubanks saw that the car's steering column had been tampered with and that the radio was missing. He spoke with defendant in Spanish and

English, but noticed that defendant had difficulty speaking and understanding English. While they were driving back to Redwood City, their car was stopped by Burgess.

Defendant testified that on January 22 he went to Redwood City to visit a coworker. There he encountered his cousin and Eubanks. His cousin gave him keys to the Jeep and told him to give Eubanks a ride home. He told defendant that he owned the Jeep and that its registration and insurance papers were in the glove compartment. Defendant noticed that the driver's side window was broken and that the car's radio was missing. He did not know that the car was stolen.

Defendant said he drove Eubanks to his house, but then drove with him to Oakland to find defendant's uncle. They did not find the uncle. They stopped for coffee and then turned back for Eubanks's home. On the way back they were stopped by Burgess. Defendant understood Burgess's questions, but felt that he had trouble making the officer understand him. Defendant's primary language is Spanish. He understands English, but does not speak it well. He cannot read or write in any language.

The jury convicted defendant of all three charges. The court found true the allegations of prior convictions and sentenced defendant to two years in state prison and ordered him to register as a narcotics offender. This timely appeal followed.

DISCUSSION

Judge's denial of a continuance for preparation of closing arguments

Appellant's sole contention on appeal is that the court abused its discretion and deprived him of effective counsel when it denied his request for an overnight continuance. Trial began the morning of April 21, 2009. A jury was sworn at 3:30 p.m. and was told by the court that it estimated that deliberations would begin the next day. Two witnesses were called that afternoon, presenting some 13 minutes of testimony, and court adjourned for the evening shortly after 4:30 p.m. The following day several witnesses testified between 9:56 a.m. and 10:50 a.m. and from 11:12 a.m. until noon, when the court recessed for lunch. Counsel returned to chambers at 1:33 p.m. to discuss jury instructions. Towards the end of the conference, at about 2:00 p.m., defendant moved to continue the trial to the following day in order to permit counsel to prepare

closing argument. The prosecutor concurred but the court denied the request. Court reconvened with the jury at 2:05 p.m., heard a few minutes of additional testimony, and proceeded to instructions and closing arguments. No single witness gave more than 40 minutes of testimony, and the witnesses' cumulative testimony consumed less than two hours.

“In the absence of a showing of an abuse of discretion and prejudice to the defendant, a denial of his or her motion for a continuance does not require reversal of a conviction.” (*People v. Somayoa* (1997) 15 Cal.4th 795, 840.) Neither abuse nor prejudice is present here. A trial court does not abuse its discretion “as long as there exists ‘a reasonable, or even fairly debatable justification, under the law, for the action taken. . . .’ ” (*Gonzales v. Nork* (1978) 20 Cal.3d 500, 507.) An appellate court may not interfere with a trial court’s discretion unless, “ ‘under all the evidence, viewed most favorably in support of the trial court’s action, no judge could reasonably have made the order that [the court] did.’ ” (*Smith v. Smith* (1969) 1 Cal.App.3d 952, 958.) The trial here consumed less than two full days and involved less than two hours of testimony, in which many of the material facts were not disputed. It was not unreasonable for the court to conclude that neither extensive preparation nor review of the testimony was necessary to permit the attorneys to prepare their arguments to the jury.

Moreover, the refusal to defer closing arguments to the following day caused no apparent prejudice and certainly did not deprive defendant of the effective assistance of counsel. “To establish ineffective assistance of counsel, a defendant must show that (1) counsel’s representation fell below an objective standard of reasonableness under prevailing professional norms, and (2) counsel’s deficient performance was prejudicial, i.e., there is a reasonable probability that, but for counsel’s failings, the result would have been more favorable to defendant.” (*People v. Scott* (1997) 15 Cal.4th 1188, 1211.) Defendant’s closing argument reflects no inability to articulate and urge defendant’s view of the evidence. The argument presents a coherent, persuasive summary of law and evidence in his favor. There is no indication of how counsel might have strengthened his argument with more time for preparation. Even assuming that with more time the

argument might have been improved, the same assumption would apply to the prosecutor's argument, and there is no reason to believe that these improvements would have affected the outcome.

The jury's verdict was supported by considerable evidence. Defendant was found driving another person's car without the owner's permission. The car's window had been shattered, its steering column had been tampered with, its radio was missing, and false plates had been mounted. The interior of the car contained shattered glass, a nonstandard key, and tools that could be used for auto theft. The defense to the automobile offense rested on the self-serving and unsupported testimony of the defendant that his cousin had given him the car to drive and told him the Jeep was his, which defendant presumably believed to be true despite the broken glass, unusual key and damaged steering column. There was virtually no defense to the charges that defendant initially gave the officer a false name and was driving without a license. In short, there is no reasonable probability that a continuance would have substantially altered the outcome of defendant's trial.

Disposition

The judgment is affirmed.

Pollak, Acting P. J.

We concur:

Siggins, J.

Jenkins, J.